

TODD R. KIRKIE
v.
ACTING ABERDEEN AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 89-71-A

Decided September 13, 1989

Appeal from the denial of an application for adult vocational training.

Affirmed.

1. Indians: Education and Training: Vocational Training

In order to receive adult vocational training through the Bureau of Indian Affairs, an applicant must be an adult Indian residing on or near the reservation.

APPEARANCES: Todd R. Kirkie, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant Todd R. Kirkie seeks review of a May 2, 1989, decision of the Acting Aberdeen Area Director, Bureau of Indian Affairs (BIA; appellee), concerning the denial of his application for adult vocational training. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

Background

Appellant is a member of the Crow Creek Sioux Tribe (tribe), who for the past 15 years has lived with his parents in Sioux Falls, South Dakota. He graduated from high school in Sioux Falls in May 1989 and applied for adult vocational training from BIA to attend a cook-chef training program at the Mitchell Vocational-Technical School, Mitchell, South Dakota.

By letter dated April 5, 1989, the Superintendent, Crow Creek Agency, BIA (Superintendent), informed appellant that his application was being denied. The Superintendent stated that under 25 CFR 27.5, 1/ applicants for BIA adult vocational training must be adult Indians residing on or near the reservation. In the case of the Crow Creek Sioux Tribe, the Superintendent stated that the recognized BIA service area was coequal with the exterior

1/ Section 27.5 states: "Applicants [for the BIA vocational training program] must be adult Indians residing on or near Indian reservations."

boundaries of the reservation. The Superintendent indicated, however, that BIA would assist appellant in locating other funding sources.

Appellant appealed this decision to appellee, stating that even though he had not lived on the reservation, he was an enrolled member of the tribe and had maintained close contact with his Indian heritage. By letter dated May 2, 1989, appellee affirmed the Superintendent's denial.

The Board received appellant's notice of appeal from appellee's decision on June 5, 1989. Pursuant to the Board's June 26, 1989, notice of docketing, appellant filed a statement in support of his appeal. No other briefs were received.

Discussion and Conclusions

[1] In 1974, the Supreme Court ruled that Congress intended BIA's social services programs to apply to unassimilated Indians living in an Indian community near their native reservation, and who maintain close economic and social ties with that reservation. Morton v. Ruiz, 415 U.S. 199 (1974). Following that decision BIA began to designate "near reservation" areas, the Indian residents of which would be eligible to receive the same BIA services as Indians residing on the reservation. BIA's regulations governing the adult vocational training program are set forth in 25 CFR Part 27. As defined in 25 CFR 27.1(k);

"Near reservation" means those areas or communities adjacent or contiguous to reservations which are designated by the Assistant Secretary [Indian Affairs] upon recommendation of the local Bureau superintendent, which recommendation shall be based upon agreement with the tribal governing body of those reservations, as locales appropriate for the extension of financial assistance and/or social services on the basis of such general criteria as:

- (1) Number of Indian people native to the reservation residing in the area;
- (2) Geographical proximity of the area to the reservation; and
- (3) Administrative feasibility of providing an adequate level of services to the area. The Assistant Secretary shall designate each area and publish the designations in the Federal Register.

As the Superintendent and appellee indicated, no "near reservation" areas have been designated for the Crow Creek Sioux Tribe. Consequently, BIA financial and social services to that tribe encompass only tribal members residing on the reservation. Accordingly, appellee correctly held that appellant was not eligible for BIA adult vocational training. 2/

2/ Appellant argues that he lives 40 miles from the reservation of the Flandreau Santee Tribe of South Dakota. Without considering whether or not Sioux Falls is within a designated "near reservation" area for the Flandreau

On appeal, appellant has presented a tribal resolution supporting his application. The resolution states that the tribe has the authority to waive the on or near reservation clause, waives the clause, and mandates that BIA provide appellant with the requested assistance.

BIA's adult vocational training program operates under regulations promulgated by the Department of the Interior. "Near reservation" designations, although made in consultation with the affected tribe, are made by the Assistant Secretary - Indian Affairs, and published in the Federal Register. At least under the circumstances of this case, the tribe does not have the authority to waive these duly promulgated Federal regulations.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the May 2, 1989, decision of the Acting Aberdeen Area Director is affirmed.

Kathryn A. Lynn
Chief Administrative Judge

I concur:

Anita Vogt
Administrative Judge

fn. 2 (continued)

Santee Tribe, the regulations clearly provide that the reservation at issue is the applicant's native reservation, not that of another tribe.